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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78- **91**

R. W. JONES, SR., *et al.*,
Petitioners,

v.

CHARLES T. WOLF, *et al.*,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA**

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**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA**

R. W. Jones, Sr., *et al.*, respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia in the above-entitled case.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia (App. 11a-16a) is not yet reported. The Order of the Supreme Court of Georgia denying rehearing (App. 18a) is not reported. The opinion of the Superior Court of Bibb County, Georgia (App. 1a-10a) is not reported.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on April 4, 1978. The Order of the Supreme

Court of Georgia denying a timely petition for rehearing was entered on April 19, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Does the First Amendment, as interpreted by this Court in *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976), require civil courts to defer to a hierarchical church court decision concerning which of two competing factions is the "true congregation," and thus is entitled to use and control of local church property?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. Const., Amend. XIV, Sec. 1:

* * * nor shall any state deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

The issue before the lower courts in this case was which of two competing factions constitutes the "true congregation" of the Vineville Presbyterian Church in Macon, Georgia, thus entitling that faction to continued use of the church property. The facts were not in dispute, as the evidence before the trial court consisted solely of a Stipulation of Facts, together with incorporated exhibits, agreed to by both parties. There was a sharp dispute, however, concerning the proper legal standards by which the civil courts constitutionally can review such a church controversy.

On May 27, 1973, the congregation of the Vineville Presbyterian Church met and considered a resolution calling for withdrawal of the local church, and its property, from affiliation with The Presbyterian Church in the United States ("TPCUS").¹ The members of the congregation present at that time voted 165-94 in favor of the resolution, and the pastor that day notified the Augusta-Macon Presbytery of TPCUS of this action. The 165 members seeking withdrawal, who were represented in this class action by defendants (Respondents here), proceeded to strike from the church rolls the names of plaintiffs (Petitioners here), the 94 loyal church members.

As the trial court found (App. 3a-4a, 6a), TPCUS has what is commonly called a connectional, or hierarchical, form of church government and organization.² The Book of Church Order (Exhibit A),³ which governs church affairs, provides that each Local Church Unit shall be governed by its Session (consisting generally of the Pastor and elected Ruling Elders); the Session is governed

¹ The Presbyterian Church in the United States will be referred to herein as "TPCUS," following the style of the decision below. See App. 1a.

² See Note, *Serbian Eastern Orthodox Diocese v. Milivojevic: The Continuing Crusade for Separation of Church and State*, 18 WM. & MARY L. REV. 655, 656 n.10 (1977):

Hierarchical churches are those in which church authority reposes either in ascending levels of adjudicatory bodies (presbyterian hierarchies) or in sublime clergy, such as bishops and popes (episcopal hierarchies). In contrast, congregational churches are characterized by autonomous local congregations that govern themselves without control by a higher church body. * * * Examples of hierarchical churches of the presbyterian variety include the Presbyterian, Methodist, and some Lutheran churches. The episcopal type includes the Roman Catholic and Eastern Orthodox churches. Congregational churches are exemplified by the following churches: Baptist, Disciples of Christ, Quakers, and Churches of Christ.

³ Exhibits to the Stipulation of Facts will be designated herein as "Exhibit ____."

by a Presbytery, which has jurisdiction over several Local Church Units in a geographic area; each Presbytery is governed by a state Synod; and the Synods are governed by the General Assembly. App. 3a-4a.

The Book of Church Order states that these governing bodies, which are called "Church Courts," have limited and defined jurisdictions, and that "the lower courts are subject to the review and control of the higher courts." Exhibit A, § 14-5, at 40 (emphasis added). The power to dissolve a church, organize a new church, or unite or divide churches at the request of the members rests with the Presbytery. *Id.*, § 16-7, at 46. While the power to hold and convey title to local church property rests with the officers of an incorporated local church, such as the Vineville Presbyterian Church (Stipulation of Facts, at 2), such power is subject to the control of the Session and to the Constitution of TPCUS. Exhibit A, § 6-2, at 26-27. "If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property," the property must be conveyed to the Presbytery. *Id.*, § 6-3, at 27.

The Book of Church Order provides that a church court may establish a judicial or administrative commission to hear disputes and render opinions, and it sets forth detailed procedures for the hearing of such disputes and for appeals to the higher governing bodies. *See id.*, §§ 14-6, 16-7(1), 17-5(1), 18-6(1) & chapters 13-18.

In the instant case, following passage of the Vineville Church resolution of May 27, 1973, the Augusta-Macon Presbytery appointed a commission to consider this dispute. The Commission subsequently issued a written ruling that the withdrawing members had forfeited their authority to act for the church and that the 94 loyal members were the "true congregation of Vineville Presbyterian Church." Exhibit U, ¶ 1. No appeal was taken from the

Commission's decision, but Respondents nevertheless refused to give the 94 Petitioners control of, or even access to, the church property. App. 5a.

Petitioners then instituted this litigation,⁴ seeking a declaratory judgment that pursuant to the church court decision they constitute the true congregation of Vineville Presbyterian Church, and therefore that they are entitled to control over the local church property.

On September 29, 1977, the Superior Court of Bibb County, Georgia, entered its opinion in favor of Respondents. The court noted that legal title to all property of the Vineville Church is vested in the local, not the national, church—a proposition which Petitioners had never challenged. The court then apparently concluded,⁵ without explanation, that TPCUS has "no authority" to declare Petitioners the "true congregation," and that the church "is represented by" Respondents. App. 9a.

⁴ Petitioners initially brought this action in federal court, since they assumed that Respondents were relying upon a Georgia statute that appeared to give some color of right to their actions, and Petitioners claimed that the statute was unconstitutional. However, when Respondents stipulated that they were in no way relying upon this statute, the federal court dismissed for lack of jurisdiction, holding that the basic dispute arose under state property law, even though federal constitutional issues ultimately might arise. *See Lucas v. Hope*, 515 F.2d 234, 236-237 (5th Cir. 1975), cert. denied, 424 U.S. 967 (1976).

⁵ *See* App. 9a:

This Court concludes as a matter of law that legal title to all the church property of VPC is vested in the local church which is represented by defendants. TPCUS had no authority by resolution to constitute plaintiffs as trustees or as the true congregation for the purpose of creating a trust relationship with respect to the church property of VPC when none previously existed, expressly or by implication and insofar as such action (Exhibit F) [sic] sought to confer any rights of property upon plaintiffs or those they represent, such declaration is declared void and of no force and effect.

It is not clear whether the trial court was holding that TPCUS has "no authority" to determine which of two competing factions is the

The Supreme Court of Georgia, in an opinion entered April 4, 1978, affirmed the trial court. The Georgia Supreme Court recognized that civil courts are forbidden by the First Amendment from resolving church property disputes "on questions of an ecclesiastical nature," citing *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) (hereinafter, "*Hull*"). The court held, however, that it could resolve this dispute under "neutral principles of law" by looking to the property deeds and other proof that formal title rested with the local church. App. 13a. The Georgia Supreme Court noted, but then failed to discuss in any way the significance of, the church court determination that Petitioners are the true congregation of the local church. It also ignored Petitioners' contention that this Court's decisions culminating in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), require that civil courts give binding deference to such determinations by church courts within hierarchical churches.

On April 19, 1978, the Georgia Supreme Court denied Petitioners' timely petition for rehearing, and this petition for a writ of certiorari followed.

REASON FOR GRANTING THE WRIT

The Lower Courts Are in Conflict and Confusion Concerning the First Amendment Principles Enunciated in *Serbian Eastern Orthodox Diocese v. Milivojevich*.

The decision of the court below not only ignores this Court's holdings concerning the deference which the First

"true congregation," or whether the court's conclusion quoted above was limited to TPCUS' authority with regard to "creating a trust relationship." Insofar as the court was referring to the latter, it was deciding an issue not involved in this case, since Petitioners have never argued that they or TPCUS has any "trust" interest in the property, but rather that the Petitioners constitute the proper and only congregation, and thus owner, of the local church.

Amendment requires civil courts to give to the decisions of church courts within hierarchical churches, but it also represents the latest example of an unfortunately lengthy list of conflicting decisions by different courts purporting to interpret the constitutional rules in this area. This Court should grant certiorari here so that the various national hierarchical churches, and their many millions of members, need not continue to suffer contradictory rulings concerning their powers and jurisdiction.

Beginning with *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), this Court has held that "the rule of action which should govern the civil courts * * * is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these [hierarchical] church judicatories to which the matter has been carried, the legal tribunals must accept such decision as final, and as binding on them * * *." *Id.* at 727.⁶ In subsequent decisions this Court has made clear that the *Watson* principle of deference to decisions of hierarchical church courts is fully grounded in the First Amendment, see *Hull, supra*, 393 U.S. at 446-449; *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952), and applies to issues of internal church government and polity, as well as to questions of faith or doctrine. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-722 (1976); *Kedroff, supra*, 344 U.S. at 116.

However, in dictum in *Hull, supra*, 393 U.S. at 449, this Court for the first time referred to "neutral principles of law" which lower courts might use to resolve these

⁶ The Court went on to state that "[i]t is of the essence of these religious unions, and of their right to establish tribunals for the decisions of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." *Watson v. Jones, supra*, 80 U.S. (13 Wall.) at 729.

church property disputes. In a concurring opinion for three members of the Court in *Maryland & Virginia Eldership v. Church of God*, 396 U.S. 367, 368 (1970), Mr. Justice Brennan cited the "neutral principles" language of *Hull* and suggested that under some circumstances it might provide an alternative approach to that set forth in *Watson* and its progeny regarding the resolution of such church property disputes. 396 U.S. at 368-370.

Following *Hull* and *Maryland & Virginia Eldership*, some courts and commentators suggested that this Court had retreated from its First Amendment ruling that civil courts must defer to the decisions of hierarchical church courts.⁷ Nevertheless, in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), the Court re-emphasized the constitutional command that civil courts must defer to such church court determinations. The *Serbian* Court reversed a state court judgment because "it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes." *Id.* at 708. The final paragraph of the Court's opinion in *Serbian* summarizes the applicable constitutional rule (*id.* at 724-725):

In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are

⁷ See, e.g., *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston*, 531 S.W.2d 301, 304 (Tenn. App. 1975); *The Supreme Court*, 1968 Term, 83 HARV. L. REV. 7, 128-130 (1969); 54 IOWA L. REV. 899, 904 (1969).

created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

In the instant case, the Georgia courts totally ignored the *Serbian* Court's mandate requiring acceptance of the decision of the appropriate ecclesiastical tribunal on a matter pertaining to the internal government of a hierarchical church. Despite the fact that a duly authorized and constituted commission of the Augusta-Macon Presbytery had ruled that Petitioners comprise the "true congregation of Vineville Presbyterian Church," the Georgia Supreme Court failed to defer to, or even to discuss, that determination. Indeed, the trial court had suggested without explanation or support that the church court has "no authority" to make such a decision.⁸ See App. 9a.⁹

⁸ This ruling by the trial court directly contravenes the teaching of *Serbian* that a civil court may not substitute its own interpretation of church law for that of the designated ecclesiastical tribunal. See 426 U.S. at 720-724.

⁹ While paying lip service to the fact that TPCUS is a hierarchical church, the Georgia courts failed to focus on some of the particular provisions of the Book of Church Order, and its implementing guidelines, which other courts have found determinative in cases such as this. See *Mills v. Baldwin*, Civ. Action No. 73-100, at 6-7 (Fla. Cir. Ct. 1975), *rev'd*, 344 So. 2d 259 (Fla. App. 1977), *cert. granted*, No. 51,588 (Fla., Jan. 20, 1978) (emphasis added). A copy of *Mills* is attached hereto at App. 20a. See App. 26a:

15. The General Assembly of the Presbyterian Church US has officially adopted several declaratory statements construing and interpreting the Book of Church Order. Among those declarations may be found the following:

A. That the Book of Church Order makes no provision for unilateral withdrawal of a church to autonomy or independence.

B. That disposition of the property of a particular church rests in the will of the congregation of that church. *The congregation is that body of persons recognized as*

Citing the "neutral principles" language from the *Hull* decision, *see* App. 13a, the Georgia Supreme Court upheld the trial court's ruling that "legal title to all the church property of the Vineville Presbyterian Church is vested in the local church congregation represented by the [Respondents]." *See* App. 16a. Yet the Georgia courts never explained how a determination that title was in the local church could be dispositive of this case. The crux of the instant dispute is *which* faction represents the local church. This is the type of "quintessentially religious controvers[y] whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church." *Serbian Eastern Orthodox Diocese, supra*, 426 U.S. at 720. Thus, the Georgia courts erred in not accepting the church court's designation of Petitioners as the "true congregation." Although in this case deference to the church court would determine the ultimate issue of which group had the right to control the church property, "the civil courts must accept that consequence as the incidental effect of an ecclesiastical

members of that particular church by the respective courts of the church.

C. That the beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation with respect to such property may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance *nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church US as established by the constitution of such church.*

Accord, e.g., Presbytery of the Covenant v. First Presbyterian Church, 522 S.W.2d 865, 868 (Tex. Civ. App. 1977) (TPCUS Book of Church Order gives Presbytery power to "redress whatever the Session may have done contrary to order").

determinaiton that is not subject to judicial abrogation * * *." *Id.*

During the past year several other courts have held precisely contrary to the Georgia courts on this point, ruling that civil courts *must* defer to the decision of a hierarchical church court under circumstances identical to the instant case. Thus, in *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865 (Tex. Civ. App. 1977), a majority of a local congregation sought to withdraw from the Presbyterian Church in the United States. The Texas court reviewed the TPCUS system of church government, and Book of Church Order, and concluded that "it is undisputed and has been uniformly recognized by the decisions that [TPCUS] is * * * connectional or hierarchical, at least as to ecclesiastical matters and church government." *Id.* at 868, 870. In the *Presbytery of the Covenant* case, as in the instant case, a Commission of the Presbytery, appointed pursuant to the Book of Church Order, had concluded that the congregation's resolution of withdrawal "was null and void," and that the members of the congregation who remained loyal to TPCUS constituted the true congregation of the local church. *Id.* at 869-870. Under these circumstances, the court held that it must defer to the church governing body concerning the issue of which of the two factions is the "representative and successor to the church as it existed prior to the division." *Id.* at 871. The court noted that the fact that the local church owns the property is irrelevant in cases such as this, since the true question is which faction constitutes the local church. *Id.* at 872. "It is a simple question of identity," the court concluded, and not one which can be resolved by looking at such "neutral principles" as an analysis of deeds or formal title. *Id.* at 871. *Accord, State ex rel. Morrow v. Hill*, 51 Ohio St. 2d 74, 364 N.E.2d 1156, 1158 n.2 (1977):

The issue of title is not determinative of the present issue. Moreover, neither party disputes that title is

in the local church. Still unresolved would be the underlying and determinative issue of this case: which faction is rightly the local church?

In another recent decision directly contrary to the Georgia courts' rulings in the instant case, *First Presbyterian Church v. United Presbyterian Church in the United States*, 430 F. Supp. 450 (N.D.N.Y. 1977), the court again was faced with a local church seeking to withdraw from the national church. A commission of the national church had ruled that the local church majority¹⁰ seeking to withdraw should "cease to act" on behalf of the local church. *Id.* at 452-453. After reviewing this Court's decisions in *Watson* and *Serbian*, the court in *First Presbyterian Church* held that "the inquiry of this court may not extend beyond a determination that the dispute herein arose in a hierarchical church; that UPCUSA has established its own rules and tribunals for the adjudication of disputes and the discipline of its subordinate bodies; that ecclesiastical action has been taken by the appropriate judicature; and that the actions and decisions thus taken are binding upon the civil courts." *Id.* at 456.

On the other hand, several other state courts, purporting to following a "neutral principles" analysis, have interpreted *Hull* and *Serbian* in the conflicting manner of the Georgia courts in the instant case. One case directly in point is *Mills v. Baldwin*, *supra* note 9. The facts in that case are virtually identical to those here. The trial court in *Mills*, which also involved an attempted withdrawal from TPCUS by a local church, reviewed the hierarchical structure and rules of TPCUS and concluded that the civil courts must defer to the church court determination that the minority faction remaining loyal to

¹⁰ The majority vote for withdrawal in the *First Presbyterian Church* case was 223 to 3, with 9 abstentions. 430 F. Supp. at 452.

TPCUS represents the true congregation. See App. 20a, where the unpublished trial court decision is printed. The Florida appellate court reversed, in a 2-1 opinion, based upon its view of "neutral principles" of state property law. The majority rejected the dissenting judge's view that the true issue in the case is which faction in fact constitutes the local church, and that the civil courts must defer to the church court ruling on this point. 344 So. 2d at 267-268. Indeed, contrary to this Court's pronouncements in *Serbian* (426 U.S. at 710-711) and *Kedroff* (344 U.S. at 116), the Florida Court of Appeals suggested that the true meaning of this Court's recent decisions is that the states are no longer required to follow the *Watson v. Jones* deference rule. See 344 So. 2d at 267 n.23. The Supreme Court of Florida has granted certiorari to review the Court of Appeals decision. See note 9, *supra*.

The Supreme Court of Appeals of West Virginia, in another post-*Serbian* decision, apparently has adopted the rule that it will defer to hierarchical church court decisions *only* when "a case is not susceptible to the application of completely neutral principles of law." *Board of Church Extension v. Eads*, 230 S.E.2d 911, 919 n.6 (W. Va. 1976).

In *Kelley v. Riverside Blvd. Independent Church of God*, 44 Ill. App. 3d 673, 358 N.E.2d 696 (1976), the court expressly noted the conflict between state courts concerning whether this Court's decisions (including *Serbian*), taken together, require deference to church court determinations. 358 N.E.2d at 702. The court in *Kelley* rejected the contrary state court decisions interpreting the First Amendment to require such deference, concluding that "we are not persuaded that these decisions represent the better view or that they are mandated by the first amendment." *Id.*

It is evident that the conflict existing in lower court decisions subsequent to *Serbian* is attributable to judicial

confusion concerning the concept of "neutral principles." Different state courts have chosen—apparently arbitrarily—between a "deference" approach and a "neutral principles" approach, and the choice of approach predictably determines the outcome of the case. See McKeag, *The Problem of Resolving Property Disputes in Hierarchical Churches*, 48 PA. BAR ASS'N Q. 281, 286 (1977). Numerous commentators have pointed out the uncertainty that remains in this area of the law after *Serbian* concerning whether the neutral principles approach retains any applicability to this type of church property dispute, where there has been a determination by a hierarchical church body. See, e.g., Note, *Serbian Eastern Orthodox Diocese v. Milivojevic: The Continuing Crusade for Separation of Church and State*, 18 WM. & MARY L. REV. 655, 676 (1977) ("The exact limits of authorized review [of ecclesiastical decisions] remain unclear * * *. Clarification of the holding [in *Serbian*] is necessary * * *"); 1977 WISC. L. REV. 904, 924 ("There is no unanimity of opinion on how the first amendment ought to be construed in its application to church disputes, and its past interpretations by the Court have not always been consistent"); 1977 UTAH L. REV. 138, 148-149 ("Uncertainty in the application of *Serbian* also arises because the Court did not expressly make *Serbian* the exclusive approach. The Court did not explicitly reject 'the formal title,' 'neutral principles,' or 'state statute' analysis, nor did it give guidance concerning the permissible scope of these or other approaches"). But see 45 FORDHAM L. REV. 992, 1001 (1977) ("Thus a rule emerges [after *Serbian*] as to hierarchical churches that is clear and definitive—the decision of a hierarchical church tribunal is final. Neutral principles of law may not be used in the future to review those decisions * * *").

It should be noted that the lower courts' determination in the instant case would be incorrect *even if* a "neutral principles" approach were appropriate. First, as dis-

cussed at page 10, above, the Georgia courts' conclusion that formal title rests with the local church is simply irrelevant to the issue presented here: which faction represents the local church?

Second, the decisions below cannot properly be upheld by resort to a "neutral principle" of "majority rule." For the civil courts to impose such a principle upon hierarchical churches—whose fundamental documents provide for a different method of organization—would be an extreme and unjustified interference with the church members' free exercise of religion, as guaranteed by the First Amendment. "[I]t is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads." *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 122 (1952) (Frankfurter, J., concurring).

The importance of this issue and the impact of its resolution can hardly be overstated. The fact is that most churches within TPCUS are quite small—47 percent of its congregations have less than 100 members, and 12 percent have 24 members or less. See Brief of Amicus Curiae The Presbyterian Church in the United States in Support of the Grant of Certiorari. A principle of "majority rule" would invite serious abuse, by allowing a handful of people to purport to join a local church and then to withdraw that local church from the national church and appropriate to another denomination—or conceivably even to themselves—the extremely valuable church property. It is not being overly imaginative, particularly where church property is valuable and the congregation is small, to foresee this happening with increasing incidence if the determinations of national churches are disregarded by our civil courts.

Finally, to the extent that a "neutral principles" approach requires or allows consideration of state statutes,

Section 22-5507 of the Georgia Code provides that title to property may be held by churches or religious societies, and that such property "shall be fully and absolutely vested in such church or religious society * * * according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively" (emphasis added). The Georgia Supreme Court, however, rejected Petitioners' argument that this statute also requires the civil courts to defer to the decision of a church governing body concerning which faction is the true local church and thus is entitled to control its property. App. 14a-15a.

It is especially important that this Court resolve quickly the conflict and uncertainty in the lower courts concerning application of the *Serbian* principles to church property disputes such as the instant case. The Presbyterian Church in the United States is only one of many broad-based, or national, hierarchical churches. See note 2, *supra*. Each of these churches has a detailed constitution or rules which seek to govern the relationship between the local church units and the national church. Given the present state of confusion in the law, these national rules and constitutions are subject to widely varying interpretation and enforcement in the different states.

Moreover, it should be emphasized that these issues are not merely of academic concern. The case books are filled with literally hundreds of such intra-church property disputes,¹¹ and new cases calling for the resolution of these issues continue to arise frequently.¹² TPCUS alone has

¹¹ See Annot., *Determination of Property Rights Between Local Church and Parent Church Body: Modern View*, 52 A.L.R.3d 324 (1973) (103-page review of decisions, focusing on cases arising in hierarchical churches, especially since *Hull*).

¹² Several unreported cases raising identical issues concerning local churches' attempted withdrawals from national hierarchical churches are currently awaiting decision in state courts. See, e.g.,

been the subject of a series of conflicting decisions during the past few years concerning attempts by local congregations to withdraw from the national church. See, e.g., *Presbytery of the Covenant v. First Presbyterian Church*, *supra*, 552 S.W.2d at 870-871 (church court decision designating true congregation granted deference pursuant to "neutral principles" approach); *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442, *cert. denied*, 423 U.S. 913 (1975) (relying on *Hull*'s "neutral principles," court accepted findings of the appropriate church judicatory as to identity); *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston*, 531 S.W.2d 301 (Tenn. App. 1975) (implied trust found in favor of general church); *Baldwin v. Mills*, *supra*, 344 So. 2d at 264-267 (formal title doctrine utilized pursuant to "neutral principles"); *Jones v. Wolf*, App. 11a (same).

We will argue, if certiorari is granted, that the doctrine of "neutral principles" comes into play *only if* no church adjudicatory procedures are available or have been followed—unlike the situation here where the proper church "court" has ruled and the Respondents have failed to appeal as provided for in the governing church documents. If a civil court could ignore a properly-arrived-at ecclesiastical finding as to which group constitutes a congregation, and could instead follow an "alter-

Winklesley v. Trinity Presbyterian Church, No. CV-77-542 (Mont. Cy. Ala. Cir. Ct., filed June 23, 1977) (attempted withdrawal from TPCUS); *United Presbyterian Church in the United States v. Covenant United Presbyterian Church*, No. 77-4645-19 (Pinellas Cy. Fla. Cir. Ct., filed May 20, 1977) (attempted withdrawal from United Presbyterian Church); *Presbytery of Riverside v. Blackstone*, Nos. I-13680 (Master file), I-12302 (Riverside Cy. Calif. Super. Ct., Apr. 21, 1977), *appeal docketed*, 4th Civ. No. 19079 (Calif. Ct. App., 4th App. Dist., June 16, 1977 (same)); *Protestant Episcopal Church v. Barker*, Nos. C 188907, C 189571, C 189572, C 190652 (Los Angeles, Calif. Super Ct., filed February 1977) (attempted withdrawals from Protestant Episcopal Church by four separate local congregations).

"neutral principles" of law to decide the very same question, the civil court would have abridged the First Amendment separation of church and state just as egregiously as if it had directly overruled the ecclesiastical finding.

It is sufficient for present purposes, however, merely to point out the utter confusion in the courts below and the extreme importance of having this First Amendment issue definitively decided by this Court.

CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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APPENDIX

1a

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

Civil Action File 45787 D-2

Bibb Superior Court
In Equity

DECREE

This unfortunate litigation is between two factions of the Vineville Presbyterian Church, Macon, Georgia, plaintiffs being the minority faction. In their class action plaintiffs contend that the Presbyterian Church in the United States (TPCUS) is a Hierarchical Church with a connec-tional form of government in which they were members and the Vineville Presbyterian Church (VPC) a Local Unit for many years; that the defendants have with-drawn from TPCUS and have notified the Macon-Augusta Presbytery of the adoption of a resolution adopted by a majority of the congregation of the VPC purporting to withdraw the Local Church Unit from TPCUS. Its pastor withdrew contemporaneously from the jurisdiction of said church. Defendants then united with the Presby-terian Church in America (TPCA).

Plaintiffs allege that a commission duly authorized by the Church Courts of TPCUS pursuant to its Book of Church Order decreed that defendants and the class they represent are no longer officers and members of TPCUS and that plaintiffs and the class they represent were the true members of said church. No appeal was taken to any higher Church Court of TPCUS.

Plaintiffs contend that they are the proper trustees of VPC, that defendants having withdrawn from TPCUS

and united with a different church organization are acting illegally in continuing over plaintiffs' protest to maintain possession, dominion and control over the Church Edifice and other properties of VPC to the exclusion of Plaintiffs as true representatives and trustees of TPCUS.

Plaintiffs seek declaratory judgment adjudicating their rights in the premises and for a permanent injunction preventing defendants and the class they represent from continuing to use church property of VPC in any manner other than as a unit of TPCUS and from any dominion over said property in such manner as to prevent plaintiffs and the class they represent from utilizing and operating the same as a Local Unit of TPCUS. Detailed appropriate prayers for relief accompany the Complaint.

The defendants filed an Answer containing Seven Claimed Defenses.

The First Defense asserts that the Complaint fails to state a proper claim upon which relief can be granted.

In the Second Defense defendants deny that TPCUS is a Hierarchical Church although they admit it is generally recognized as having a "connectional form of government." In this Defense they respond to the factual allegations of the Complaint generally admitting the events and allegations set out therein but factually asserting that defendants and their class had a right to withdraw from TPCUS upon appropriate resolution of the Congregation as was done, that the Church Court of TPCUS did not have authority with regard to the property of VPC nor any right to name any of plaintiffs as trustees of VPC as it tried to do, that defendants have lawful possession, dominion and control over the VPC property and that they and the VPC are properly affiliated with TPCA. Defendants deny plaintiffs are entitled to any relief.

The Third through Seventh Defenses raise a number of assertions which will not be discussed in detail except to say that defendants contend that the title to the church property of VPC belongs to this local church as a corporation free of any control from plaintiffs as representatives of their class or as trustees of TPCUS. Defendants set out in detail the history of title acquisition by VPC.

Defendants pray that the prayers of plaintiffs be denied and that an instrument filed by plaintiffs purporting to constitute them as trustees of VPC be declared void and of no effect by the Court.

The Parties through their Counsel of record entered into a written stipulation of facts which was approved by the Presiding Judge and filed as part of the record in the case. The Stipulation deals comprehensively with the facts essential to a determination of the matter and allows the Court to proceed with a final decision without the intervention of a jury. No additional evidence is deemed necessary by the Court and the controversy is ripe for final determination.

The Stipulation of Facts is by reference incorporated into this Order and adopted in toto as findings of fact by the Court.

In summary, the Court finds the following facts.

VPC was organized in 1904 and its membership duly submitted a petition to the Augusta-Macon Presbytery of TPCUS and was by it established as a Member-Unit of that Presbytery.

TPCUS has a connectional form of government and organization as set forth in the "Book of Church Order," the "Fourteenth Printing 1972," being the Book in effect in 1973 when the events under investigation occurred. Generally, TPCUS is organized so that a Local Unit is governed by its Session; the Sessions of the Local Church

are governed by what is known as a Presbytery which governs several Local Church Units in a particular area; the Presbytery is governed by a Synod which is over all Local Units and Presbyteries within a State; and the Synods are governed by the General Assemblies [sic] which in turn governs all Local Church Units, Presbyteries and Synods in the United States.

Title to the VPC property was acquired by conveyances shown as Exhibits B, C, C1, D, E, F, G, H and I (stipulation of facts) all being to named trustees of VPC or simply to VPC. VPC was incorporated in 1915 and its charter has since been revived and renewed (Exhibits J and K). Since 1908 VPC has repeatedly borrowed money on its property under authority of resolutions adopted by its congregation evidenced by security deeds signed by trustees of VPC.

In 1973 plaintiffs and defendants and the classes they represent were members of VPC which in turn was a Member-Unit of the Augusta-Macon Presbytery of TPCUS. On May 27 of that year while a quorum of the congregation of VPC was present, members of the class represented by defendants presented a resolution (Exhibit R) duly adopted by 165 (defendant class members) voting in favor while 94 (plaintiff class members) voted against it. This resolution purported to separate VPC and its property from any affiliation with the Augusta-Macon Presbytery and TPCUS and to vest all control with the local church as an independent, self-governing church pending formation of a new Presbyterian organization and denomination different in certain particulars from TPCUS. The Augusta-Macon Presbytery was notified of this action on May 27, 1973 (Exhibit S) and the local pastor of VPC also advised of his relinquishment of membership in the Presbytery (Exhibit T).

Thereupon the Augusta-Macon Presbytery declared plaintiffs and their class the true congregation of VPC

and withdrew from defendants their class and the pastor all authority derived from TPCUS and purported to forfeit all their ecclesiastical privileges and rights of property of the congregation (Exhibit U).

Thereafter, defendants and their class in VPC by appropriate vote united with the Central Georgia Presbytery of the Presbyterian Churches of America, which is not affiliated with TPCUS in any manner.

Since May 27, 1973, defendants have al [sic] all times retained possession, dominion and control of all property and assets of VPC to the complete exclusion of plaintiffs and the class they represent as a Local Unit of TPCUS and plaintiffs have carried on their church activities elsewhere than at the VPC location of 2193 Vineville Avenue, Macon, Georgia.

Defendants have caused the names of plaintiffs and their class to be stricken from the rolls of VPC and have so notified plaintiffs (Exhibit V).

Subsequent to the Book of Church Order "Fourteenth Printing 1972," changes were made in the Book of Church Order by the 112th General Assembly TPCUS being the "Fifteenth Printing 1975" by the addition of a new section added to Chapter 4 entitled "The Organization of a Particular Church" which new section states that the relationship to TPCUS of a particular church can be severed only by constitutional action on the part of the appropriate Presbytery (Exhibit W).

The United Presbyterian Church in the United States of America is a Presbyterian body which is not connected with TPCUS and which has its own rules dealing with the property of local churches (Exhibit X). Moreover, the United Methodist Church has its Book of Discipline by which it is governed, including rules dealing with church property (Exhibit Y). The Methodist Church is in no way affiliation [sic] with TPCUS.

The defendants do not claim any right of possession of any church property by virtue of any claim arising under *Ga. Code Ann.* Sec. 22-5504 or 22-5506.

It is agreed that the Vineville Presbyterian Church, a non-profit Georgia Corporation shall be bound by the judgment to be rendered in this case to the same extent as if made a party.

The Court finds that the controversy is appropriate for Declaratory Judgment procedure in that a bona fide controversy exists and the rights of plaintiffs in and to VPC property ought to be determined. *Ga. Code Ann.* Sec. 110-1101 and 1102.

The Court finds that from the point of view of the plaintiffs and the defendants the proceeding is a proper class action under *Ga. Code Ann.* 81A-123(a)(2). Each side fairly represents the class it purports to represent and no additional parties are essential for a fair, full determination of the issues presented.

This controversy involves a dispute with respect to a connectional or hierarchical rather than a congregational church denominational organization. It is in the former type of church structure that difficulties arise as to the right to control church properties as between the central church organization (or a faction claiming under it) and the local church congregation when the latter become dissatisfied with the affiliation and seek for whatever reason to withdraw. Both sides through their able attorneys trace well the history of church litigation in this area in the English as well as American States and Federal appellate court decisions. However, in the opinion of this Court an examination of the following cases is dispositive of the legal issues: *Presbyterian Church in the U.S. v. Eastern Heights Presbyterian Church*, 224 Ga.61, rev'd. 393 U.S. 440; *Presbyterian Church in the U.S. v. Eastern Heights Presbyterian Church*, 225 Ga.

259; *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367; and *Carnes v. Smith*, 236 Ga. 30.

In the *Eastern Heights* litigation the U.S. Supreme Court held that civil courts could resolve property disputes, but that the United States Constitution forbids them from determining ecclesiastical questions in the process. Civil courts must resolve church disputes on neutral principles of law developed for use in all property disputes. This holding emasculated the former Georgia rule in connective form church cases that there was an implied trust on local church property for the benefit of the general church, but that as a part of this rule the implied trust was conditioned on the general church adhering to its tenets of faith and practice existing at the time of affiliation by the local church. Thereafter, in final disposition of that case the Georgia Supreme Court held that the entire trust theory must fall, condition and all. That theory having fallen and no other basis for a trust in favor of the general church being found in the deeds to the property, or otherwise implied under the statutes, *or required by the constitution of the general church* the property was awarded to the local churches.

In the *Carnes* litigation (a 4-3 decision) the Court considered a Methodist church schism which fit snugly in one of the exception niches underlined above through which the association with a central connectional church by a local church could as a matter of doctrine, law or constitution of such central (general) church necessarily imply a trust. More than a mere connectional relationship between the local and general church must exist.

Just what criteria could be used to resolve property disputes in this area of litigation was clarified to a degree in the *Churches of God* case by the Supreme Court of the United States by denial of review of a Maryland Court of Appeals decision on the basis of civil property

law rules which, like Georgia since the *Presbyterian Church* cases, has no implied trust doctrine. Inquiry was not made into religious doctrine which would violate the First Amendment. The Maryland Court looked to the language of the deeds, applicable state statutes regarding religious corporations, the connectional church constitution and the corporate charters of the local churches. This practice was adopted by the Georgia Supreme Court in *Carnes*.

However, upon application of these criteria, the decision in *Carnes* went off in the opposite direction and the majority of the Court, applying Code Sec. 22-5507 and 5508, found the Book of Discipline of the United Methodist Church to require that title to all real property owned or acquired by a local church shall be held for the use and benefit of the local church and the United Methodist Church. The Book of Discipline of the Church went on to provide that the absence of a suggested trust provision would not relieve the local church of connectional responsibility and accountability to the United Methodist Church provided certain conditions (i.e. use of name of the United Methodist Church, acceptance of pastorate of ministers appointed by the central church, etc.) were met.

Applying the neutral principles of law applicable in Georgia to the association between the local church in *Carnes* with the United Methodist Church the Court found an implied trust intended by the founders of the local church. By application of the Book of Discipline to the relationship, the Court found it would not be fair to have a local church take advantage of the use of polity, name, finances and other aspects of its operation without being bound by the implied trust provisions of its constitution and rules. Citing authority from other jurisdictions, the majority of the Court ruled the local church may not participate in the functioning of the central church, yet disclaim affiliation so as to shield from

obligation valuable property acquired by the local church before or during affiliation.

Applying these rules to the controversy at hand, there is nothing in the deeds, the applicable Georgia statutes regarding religious corporations, TPCUS Book of Church Order or Discipline, or the Corporate Charter of the VPC to indicate any express or implied trust in favor of any group other than the local congregation of VPC. Moreover, Section 6-2 of the Book of Church Order of TPCUS provides specifically that a church corporation can elect trustees to hold and manage local church property and can buy, sell and mortgage such property under authority of such corporation. This policy is inconsistent with trusteeship on behalf of the central church but is consistent with the way defendants and VPC have acted in relation to TPCUS as shown in the record before the Court. No one other than local members paid any funds to acquire the VPC properties.

This case falls squarely under the authority of the final chapter of the *Eastern Heights* litigation at 225 Ga. 259.

This Court concludes as a matter of law that legal title to all the church property of VPC is vested in the local church which is represented by defendants. TPCUS had no authority by resolution to constitute plaintiffs as trustees or as the true congregation for the purpose of creating a trust relationship with respect to the church property of VPC when none previously existed, expressly or by implication and insofar as such action (Exhibit F) [sic] sought to confer any rights of property upon plaintiffs or those they represent, such declaration is declared void and of no force and effect. The 1975 change in the Book of Church Order of TPCUS may not be considered.

It is not deemed necessary to comment upon many other points and issues sought to be raised by counsel in their briefs.

10a

Final Judgment on the merits of the Complaint is granted to defendants and against plaintiffs. The Complaint is dismissed and defendants are discharged with their costs.

So ordered this 29th day of September, 1977.

/s/ James B. O'Connor
JAMES B. O'CONNOR
Judge
Oconee Judicial Circuit
Presiding in Bibb Superior Court

Filed Sep. 30, 1977, Clerk's Office, Superior Court,
Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

11a

IN THE SUPREME COURT OF GEORGIA

Decided: Apr. 4, 1978

33126

JONES ET AL.

v.

WOLF ET AL.

NICHOLS, Chief Justice.

This is a title dispute arising over which faction retains the property in a church schism.

On May 27, 1973, a resolution was presented to the congregation of the Vineville Presbyterian Church of Macon seeking to withdraw the church and its property from any affiliation with the Augusta-Macon Presbytery and the Presbyterian Church in the United States and to become an independent, self-governing church pending formation of a new Presbyterian organization and denomination. With a quorum present, the resolution carried by a vote of 165 to 94.

On the same day the Augusta-Macon Presbytery was notified of the resolution, and the pastor of the Vineville church advised the Presbytery of his relinquishment of membership in the Presbytery. Subsequently, a commission of the Presbytery declared those voting in the minority to be the true congregation of the Vineville church and withdrew from the majority as well as the pastor all authority derived from the Presbyterian Church in the United States.

Thereafter, the majority (appellees in the present case) united with the Central Georgia Presbytery of the Pres-

byterian Church of America, which has no affiliation with the Presbyterian Church in the United States.

Since the vote to withdraw from the Presbyterian Church in the United States, the appellees have at all times retained possession and control of all property and assets of the Vineville church and have caused the names of the minority (appellants in the present case) to be stricken from the church rolls.

In an effort to have the property issue resolved in federal court, the appellants filed an action in the United States District Court for the Middle District of Georgia, which action was dismissed for lack of jurisdiction. That dismissal was affirmed by the United States Fifth Circuit Court of Appeals. *Lucas et al. v. Hope et al.*, 515 F2d 234 (1975); rehearing denied 523 F2d 1055 (1975). The United States Supreme Court denied certiorari. *Lucas et al. v. Hope et al.*, 424 US 967 (1976).

Thereafter, appellants brought this action seeking declaratory judgment adjudicating their rights and seeking a permanent injunction preventing appellees from continuing to use the church property in any manner other than as a unit of the Presbyterian Church in the United States. Neither the Augusta-Macon Presbytery nor the Presbyterian Church in the United States is a party to the action.

The case was submitted on briefs and stipulated facts and was decided by the court without the intervention of a jury. After examining all facts essential to the making of a determination, the trial court ruled in favor of appellees and dismissed appellants' complaint. That judgment is affirmed.

Since *Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, 393 US 440 (89 SC 601, 21 LE2d 658) (1969), civil courts have been forbidden, under First

Amendment principles as applied to the states by the Fourteenth Amendment, from resolving church property disputes on questions of an ecclesiastical nature. That case was decided on certiorari from this court and on remand this court abandoned in its entirety the theory that imposed an implied trust on property of a local connectional church for the benefit of the general church, conditioned upon adherence to tenets of faith. *Presbyterian Church in the United States et al v. Eastern Heights Presbyterian Church*, 225 Ga. 259 (167 SE2d 658) (1969). The decision of the Supreme Court of the United States stated there are neutral principles of law, developed for use in all property disputes, which can be applied in resolving church property disputes without resolving underlying controversies over religious doctrine.

In *Carnes v. Smith*, 236 Ga. 30 (222 SE2d 322) (1976), this court examined developing case law to determine the "neutral principles of law" to be applied in settling church property disputes. *Carnes* relied upon the case of *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 US 367 (90 SC 499, 24 LE2d 582) (1970), in which the United States Supreme Court sanctioned examination of language in deeds, applicable state statutes regarding religious corporations, provisions in church constitutions, and the corporate charter of the local church as "neutral principles of law" that appropriately may be considered. The general church constitution in the case at bar is the *Book of Church Order*, Fourteenth Printing, 1972, which was in effect at the time this dispute arose.

The appellants enumerate one error: The trial court erred in finding in favor of the appellees-defendants and in dismissing the complaint of the appellants-plaintiffs.

Appellants contend that because it is stipulated that the appellants and the class they represent are those who remain loyal to the Presbyterian Church in the

United States, it follows therefore that they are entitled to the property. In reality, appellants merely are seeking to return to the implied trust theory rejected by the court in *Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church*, 225 Ga. 259 (167 SE2d 658) (1969) and are seeking to abandon entirely the "neutral principles" enunciated in *Carnes*. Under *Carnes* more than a mere connectional relationship between the local and general churches must exist to give rise to property rights in the general church.

Applying *Carnes*, does more than a mere connectional relationship between the local and general churches exist according to the record? An examination of the deeds, from the first (1908), shows with but one exception that the grantees were named trustees for the Vineville church taking for the proper use of the Vineville Presbyterian Church. The one exception is a deed naming the Vineville church itself as grantee. There is no language giving the general church any interest in the property. An examination of security deeds executed on behalf of the church (the church borrowed money on numerous occasions) fails to show any grant or acquiescence by any party other than the trustees acting for the Vineville church.

The corporation charter of April 29, 1915, and subsequent revivals, fail to show any interest in the corporation other than that of the congregation.

Appellants rely heavily on Code Ann. §§ 22-5507 and 22-5508 which mandate that property conveyed to a church is vested according to the mode of church government or such rules of discipline exercised by such churches or religious societies respectively, and upon *Carnes*, which held that "The statutes thus mandate that the church property be held according to the terms of the church government." 236 Ga. at 38. However, those statutes do not purport to give a general church

any rights in local church property other than those rights set forth in the documents of church government. The *Book of Church Order*, Chapter 6, entitled "Incorporation and Property of a Particular Church," Sections 6-1, 6-2 and 6-3, fails to give rise to an express trust or any implied trust as defined by the General Assembly. Section 6-2, dealing with incorporated churches within the Presbytery, specifically provides that a church corporation may elect officers to hold and manage local church property and may buy, sell and mortgage such property under the authority and direction of such corporation, the membership of which includes every member of the congregation.

Appellants cite other sections of the *Book of Order* pertaining to church courts. These deal with faith and the internal structure of the church but do not deal with property rights.

This case is distinguishable from *Carnes*, in which this court found an implied trust in favor of the general church, the United Methodist Church, because its book of discipline provided that "title to all real property now owned or hereafter acquired by an unincorporated local church, . . . shall be held by and/or conveyed to its duly elected trustees . . . and their successors in office, . . . in trust, nevertheless, for the use and benefit of such local church and The United Methodist Church." No language of similar import is to be found in the Presbyterian *Book of Church Order* contained in the stipulations of the parties in the present case.

The trial court found that the Vineville Presbyterian Church had been a connectional church within the Augusta-Macon Presbytery and the Presbyterian Church in the United States but correctly held that "more than a mere connectional relationship between the local and general church must exist" to give rise to property

rights in the general church. See *Carnes v. Smith*, 236 Ga. 30 (222 SE2d 322) (1976).

The trial court concluded that as a matter of law, the legal title to all the church property of the Vineville Presbyterian Church is vested in the local church congregation represented by the appellees.

The single enumeration of error is without merit.

Judgment affirmed. All the Justices concur, except Undercofler, P.J., who concurs in the judgment only.

SUPREME COURT OF GEORGIA

#45787-D-2

ATLANTA, April 4, 1978

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

R. W. JONES, SR., et al.

v.

CHARLES T. WOLF, et al.

This case came before this court upon an appeal from the Superior Court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Undercofler, P.J., concurs in judgment only.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA 4/21/78

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Filed May 11, 1978, Clerk's Office, Superior Court of Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

Witness my signature and seal of said court hereto affixed the day and year last above written.

/s/ Joline B. Williams
Clerk

18a

CLERK'S OFFICE
SUPREME COURT OF GEORGIA

Serial No. 215

Decision Date: 4/4/78

Judge: C. J.

Case No. 33126

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

MOTION FOR REHEARING

Denied—4/19/78

19a

BIBB SUPERIOR COURT

No. 45787-D 2

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

JUDGMENT

GEORGIA, BIBB COUNTY

IN THE SUPERIOR COURT OF SAID COUNTY:

The attached Remittitur having been received by the Court;

It is, thereupon, ordered that said Remittitur be entered on the minutes, and Judgment of the SUPREME COURT—be made the Judgment of this Court, and that the APPELLANT-APPELLEE, recover of APPELLANT-APPELLEE, for use of the officers of court the sum of \$———— Costs, to be taxed by the Clerk.

In open Court this 10 day of May, 1978.

/s/ [Illegible]
Judge
Superior Courts
Oconee Circuit

Filed May 11, 1978, Clerk's Office, Superior Court of Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
IN AND FOR MADISON COUNTY, FLORIDA

Civil Action No. 73-100

CRAIG MILLS, et al.,
Plaintiffs,

vs.

JOHN P. BALDWIN, et al.,
Defendants.

FINAL JUDGMENT

THIS CAUSE came on for non-jury trial before the Court on Plaintiff's First Amended Complaint and upon the Counterclaim of the individual Defendants. The Plaintiffs are Trustees of the Presbytery of Florida of the Presbyterian Church in the United States; members of the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; and persons recognized by the Presbytery of Florida of the Presbyterian Church in the United States as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida.

The Defendants are John Baldwin, individually and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; and other persons claiming to be members of the Session of the Madison Church. They will hereinafter be referred to as "individual Defendants." The Florida First National Bank at Madison, Florida is also a party defendant, and will hereinafter be referred to as "the Defendant Bank."

Suit was brought by Plaintiffs herein in their official capacities as hereinabove set forth and on behalf of the

Presbyterian Church in the United States which is an unincorporated ecclesiastical organization devoted to the Presbyterian faith.

This controversy revolves about the ownership of the real property upon which certain church buildings are located, together with certain personal property. The Plaintiffs allege that the Madison Presbyterian Church in Madison, Florida, hereinafter called "the Madison Church," having been previously organized as early as 1840, was thereafter formed and constituted as a church on or about December 4, 1861 according to the ordinances and government of the Presbyterian Church in the United States, hereinafter referred to as the "Presbyterian Church US." Plaintiffs further allege that the real property acquired by the Madison Church through the years has been continuously used for the purpose of providing a home for the minister, and for the common use by members of the Madison Church as a place of divine worship subject always to the government and discipline of the Presbyterian Church US.

Plaintiffs assert that the beneficial ownership of the property of the Madison Church rests with Plaintiffs and those members of the congregation of said church who remain faithful to the body of the Presbyterian Church US and that under the government and discipline of the Presbyterian Church US, there can be no such thing as a unilateral withdrawal by a congregation from the Presbyterian Church US without consent of the Presbytery in whose geographical bounds the individual church is situated. Plaintiffs sought injunctive and general relief.

The individual Defendants-Counterclaimants generally denied that the Madison Church was formed according to the ordinances and government of the Presbyterian Church US and denied that the Madison Church was subject to and governed by the rules, doctrine and discipline of the Presbyterian Church US. The individual Defend-

ants-Counterclaimants also prayed for injunctive and general relief.

The Defendant Bank by answer to the Complaint filed by Plaintiffs affirmatively alleged that certain bank accounts were maintained by the Madison Church in that bank, and the Defendant Bank asserted that it would abide by any orders entered by this Court with respect to the ownership of any funds in the bank's possession.

Upon examination of the pleadings, and after consideration of the testimony and exhibits offered at the trial of this cause, and having heard argument of counsel for all parties and the Court having read and considered the Briefs filed on behalf of the Plaintiffs and individual Defendants and being otherwise fully advised in the premises, the Court makes the following findings of fact:

1. The Presbyterian Church US is an unincorporated ecclesiastical organization governed by the Presbyterian system of government comprising approximately 950,000 members located primarily in the Southeastern section of the United States. Its constitution consists of its doctrinal symbols embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with the Book of Church Order, which comprise the Form of Government, the Rules of Discipline, and the Directory of Worship.

2. The Presbyterian Church US is governed by Presbyters or Elders, gathered in Church Courts, each with specific jurisdiction. It was organized on or about December 4, 1861, at which time it was called "the Presbyterian Church in the Confederate States of America." Under its form of government, the entire governmental power of the denomination is vested in church courts, or judicatories, consisting of the Session which has jurisdiction over affairs pertaining to a single congregation; the Presbytery having jurisdiction over a certain district comprising sev-

eral congregations; the Synod having jurisdiction over a still larger district including several Presbyteries; and the General Assembly having jurisdiction over the affairs pertaining to the entire church.

3. The Presbyterian Church US is not congregational in organization, but is clearly hierarchical or representative. *St. Johns Presbytery v. Central Presbyterian Church*, 102 So.2d 714, *Presbytery of the Everglades v. Morgan*, 125 So.2d 762, *Froelich v. Rowley*, 102 So. 2d 720.

4. The Madison Church was formed and constituted a church on or about December 4, 1861 according to the ordinances and government of the Presbyterian Church US (previously called the Presbyterian Church in the Confederate States of America) by authority of the Presbytery. During the period between 1851 and 1965 it acquired certain real property situated in Madison County, Florida and duly recorded in the Public Records of Madison County as set forth below:

- A. Deed Book "G" at page 59
- B. Deed Book 46 at page 375
- C. Deed Book 67 at page 542
- D. Deed Book 72 at page 349
- E. Official Records Book 36 at page 77

5. The real property was acquired by the Madison Church in the name of its Trustees as provided in the Book of Church Order which authorized title to be held by either incorporated or unincorporated churches, and all of said property was thereafter used by the Madison Church for the purpose of providing a home for its minister and for divine worship.

6. All persons including the individual Defendants who were received as members of the Madison Church took

certain vows, including a vow to submit themselves to the government and discipline of the church and were also required to affirm their approval of the government and discipline of the Presbyterian Church US.

7. That the Presbytery of Florida of the Presbyterian Church US is fully authorized under the constitution of the Presbyterian Church US with authority to act on its behalf. The Presbytery is specifically clothed under the Constitution of the Presbyterian Church US with power to receive, dismiss and dissolve churches.

8. On or about March 11, 1973 the Defendant John Baldwin moderated a congregational meeting called by the Session at which a Petition was adopted by a vote of 83 in favor of said Petition and 17 in opposition thereto. The Petition was addressed to and forwarded to the Presbytery of Florida, requesting the Presbytery to dismiss the Madison Church and its property from the Presbytery of Florida and to dismiss and dissolve the pastoral relationship between the Defendant Baldwin and the Presbytery of Florida and the Presbyterian Church US. The Petition was referred by the Presbytery to a committee for further study.

9. On or about May 9, 1973 the Synod of Florida adopted a motion requiring the Presbyteries within the Synod to appoint a commission to visit, counsel, and advise any church within each Presbytery seeking to withdraw from said Presbytery. The Synod also required the Session of any such church within its bounds to notify Presbytery of its intention to hold a congregational meeting on the issue of withdrawal and to wait for a period of ninety (90) days prior to the holding of such meeting.

10. The Presbytery of Florida appointed certain persons as members of an Administrative Commission and the Commission forwarded a communication to the Madison Church convening a meeting at the Madison Church

on May 24, 1973. The individual Defendants sent a telegram to the Administrative Commission rejecting the authority of the Commission.

11. In defiance of the aforesaid action of the Synod of Florida, the individual Defendants called and held a congregational meeting on May 20, 1973 at which time a Resolution was adopted by a vote of 74 in favor and 29 in opposition by which the Madison Church purported to unilaterally withdraw from and sever all relationship with the Presbytery of Florida and the Presbyterian Church US.

12. Thereafter, on or about June 5, 1973 the Presbytery of Florida granted the request of Defendant John Baldwin and dropped his name from the roll of the Presbytery of Florida and dissolved the pastoral relationship between the Defendant Baldwin and the Madison Church and declared the pulpit vacant. The Presbytery accepted a Petition of certain loyal members of the Madison Church to be recognized as members of the Madison Church and declared and recognized Plaintiffs Beck and Ragans and others as the Ruling Elders and members of the Madison Church with full authority to assume control of the congregation and its property.

13. On or about January 29, 1974 the Presbytery of Florida denied the Petition requesting dismissal of the Madison Church from the Presbytery and from the Presbyterian Church US. No appeal or review of any kind was filed by the individual Defendants from this decision and accordingly the action of the Presbytery became final and binding under the Constitution of the Presbyterian Church US.

14. In its original Petition adopted March 11, 1973 and forwarded to the Presbytery of Florida, the congregation of the Madison Church acknowledged their affiliation with the Presbyterian Church US and expressed the view

that their Petition for dismissal should be processed in a manner consistent with the Constitution of the Presbyterian Church US.

15. The General Assembly of the Presbyterian Church US has officially adopted several declaratory statements construing and interpreting the Book of Church Order. Among those declarations may be found the following:

A. That the Book of Church Order makes no provision for unilateral withdrawal of a church to autonomy or independency.

B. That disposition of the property of a particular church rests in the will of the congregation of that church. The congregation is that body of persons recognized as members of that particular church by the respective courts of the church.

C. That the beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation with respect to such property may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church US as established by the constitution of such church.

16. The individual Defendants and other withdrawing members of the Madison Church have, since prior to the filing of this suit and continuously thereafter failed to recognize the rights of the Plaintiffs to exercise any authority or control over the real and personal property to

which Plaintiffs are entitled under the Constitution of the Presbyterian Church US and the laws of the State of Florida.

CONCLUSION

1. This Court has jurisdiction over the parties and over the subject matter.

2. That a state may adopt any one of several approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith. *Maryland & Virginia Eldership v. Church of God at Sharpsburg*, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499; *Watson v. Jones*, 13 Wall 679, 20 L.Ed. 666; *St. Johns Presbytery v. Central Presbyterian Church of St. Petersburg*, 102 So.2d 714.

3. That a state may enforce the property decisions within a church of hierarchical polity by the highest authority which has ruled upon the dispute unless express provisions in the deed of conveyance condition the property's use in a specified manner. *Maryland & Virginia Eldership v. Church of God*, supra.

4. When a church is representative, republican, episcopalian or hierarchical in government, the church property, whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. *Nealey v. Butler*, 187 So.2d 658; *St. Johns Presbytery v. Central Presbyterian Church of St. Petersburg*, supra; *Presbytery of the Everglades v. Morgan*, 125 So.2d 762; *Froelich v. Rowley*, 102 So.2d 720.

5. In the absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclu-

sive. *Presbyterian Church v. Hull Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601, *St. Johns Presbytery v. Central Presbyterian Church*, supra.

6. Record title to the property in dispute is held by the trustees of Madison Church of Madison, Florida, for those persons recognized as members of that particular church by the respective courts of the Presbyterian Church US subject to an implied trust in said property for the uses and purposes of those belonging to and professing to be members of the Presbyterian Church US. *Presbytery of the Everglades v. Morgan*, supra; *St. Johns Presbytery v. Central Presbyterian Church*, supra.

7. When the individual Defendants withdrew from the Presbyterian Church US and organized themselves into a separate and independent organization, they carried nothing but their membership with them, and the property remained with the Presbyterian Church US through its respective courts. It made absolutely no difference that the withdrawing members constituted a majority of the congregation of Madison Church. *St. Johns Presbytery v. Central Presbyterian Church*, supra, and cases cited therein.

IT IS THEREFORE, ORDERED AND ADJUDGED that the title and possession of the real property hereinabove described is in the Madison Presbyterian Church in Madison, Florida, subject to an implied trust for the use and benefit of the Presbyterian Church in the United States. The individual Defendants have withdrawn their membership from the Presbyterian Church in the United States and may exercise no powers of office or membership therein in any way relating to the use or possession of the real property except as they may be authorized by the Presbyterian Church in the United States through its respective Church Courts.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants and all other persons in association with them having knowledge of this Judgment be and they are hereby permanently enjoined and restrained from interfering with the Plaintiffs and other loyal members of the Presbyterian Church in the United States in the use of the real or personal property of said Madison Presbyterian Church for the purpose of worship according to the doctrines, government, discipline and rules of the Presbyterian Church in the United States.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants be and they are hereby permanently enjoined from using or attempting to use the real property of the said Madison Presbyterian Church for purposes of divine worship or for any other purpose except in conformity with and subject to the government and discipline of the Presbyterian Church in the United States.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants shall forthwith deliver, transfer and assign any money, funds, bonds, securities or other property belonging to the Madison Presbyterian Church which was in their possession or under their control as of May 14, 1975 to the Plaintiffs, Oscar Beck, Jr. and Henry Ragans.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants shall forthwith deliver and transfer all books of account, financial records and church records in any way pertaining to the Madison Presbyterian Church to the Plaintiffs, Beck and Ragans.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant John Baldwin and the other individual Defendants be and they are hereby enjoined and restrained from using, occupying or residing in the property of the said Madison Presbyterian Church designated

as the manse, or from occupying the pulpit of the church property except as they may otherwise be authorized to do so by the Plaintiffs Beck and Ragans and any other persons recognized by the Presbytery of Florida as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant Florida First National Bank at Madison shall forthwith cause an accounting to be made of any and all funds on deposit with said bank in the name of Madison Presbyterian Church in Madison, Florida as of May 16, 1975. Said bank shall forthwith assign, transfer and set aside such of said funds in its possession in an amount equal to the amount of deposit as of May 16, 1975 together with any interest earned on that sum of money to the present date to the Plaintiffs Beck and Ragans. Any funds or monies left over shall be paid by said bank to such persons as may be designated by the individual Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants-Counterclaimants shall take nothing by their counterclaim and shall go hence without day.

IT IS FURTHER ORDERED AND ADJUDGED that the Court retains jurisdiction of the parties and the subject matter of this action to enter such other and further orders as may be necessary or proper to enforce said Judgment, including the award of costs.

DONE AND ORDERED in Chambers at Perry, Taylor County, Florida this 16 day of May, 1975.

/s/ Royce Agner
ROYCE AGNER
Circuit Judge

Copies furnished to:

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